

Policy and Guidelines

National Environmental Policy Act (NEPA) Requirements for Negotiated Agreements and Competitive Lease Sales for Outer Continental Shelf (OCS) Hard Mineral Resources.

BACKGROUND:

- Public Law 103-426, enacted October 31, 1994, gave the Minerals Management Service (MMS) the authority to negotiate, on a noncompetitive basis, the rights to OCS sand, gravel, or shell resources for shore protection, beach or wetlands restoration projects, or for use in construction projects funded in whole or part by or authorized by the Federal Government. The OCS Lands Act (Section 8(k)) also provides for issuing leases competitively for hard minerals on the OCS.
- The MMS has entered into several negotiated agreements for the use of OCS sand for the restoration or renourishment of coastal beaches. In those instances, the U.S. Army Corps of Engineers (COE) or another Federal agency has undertaken the environmental analyses required under the National Environmental Policy Act (NEPA). NEPA is the Nation's basic national charter for protection of the environment and establishes policy and sets goals by which Federal agencies ensure that activities do not adversely harm the environment, whether it be marine, coastal, social, or other factors.
- There are likely to be situations in which an MMS review of another agency's NEPA documents may indicate that the environmental analysis will not support the issuance of a lease in the Federal area without additional analysis.
- We also anticipate requests for the use of Federal sand for non-Federal agency projects, as well as competitive lease sales for offshore commodities, such as sand and gravel to be used as construction aggregate
- This report outlines MMS's policy and guidelines to fulfill its NEPA responsibility to ensure that development of OCS hard mineral resources is carried out in an environmentally safe and sound manner.

NEGOTIATED AGREEMENTS:

- Negotiated agreements for the use of Federal sand may be in conjunction with federally sponsored projects, usually the COE or for non-federally sponsored projects.

Chart 1 is a flow diagram outlining MMS actions for **NON-FEDERAL AGENCY OCS SAND AND GRAVEL RESOURCES NEGOTIATED AGREEMENTS**. Key considerations are presented in bullet form below.

- MMS will evaluate the proposed action and examine the potential for significant impacts associated with the action to determine if an environmental assessment (EA) or an

environmental impact statement (EIS) is required. An EA is a concise public document in which a Federal agency briefly provides sufficient evidence and analysis for determining whether to prepare an EIS or finds that the proposed action poses no significant environmental risk. An EIS is a detailed document that thoroughly analyzes the proposed action; an EIS is prepared when the Federal agency has determined that a major Federal action is being considered and that it is environmentally significant in scope and magnitude such that the potential impacts must be examined in greater detail.

- In cases of NEPA significance, that is, when the MMS has determined that the actions being considered are major and that significant environmental issues must be analyzed in-depth, area-wide, programmatic EIS's examining the environmental effects of dredging in identified borrow areas in specific geographic areas to support future negotiated agreements or project-specific EIS's may be prepared.
- After completion of an initial area-wide document, EA's to support noncompetitive leases, when requested, would be undertaken.
- In cases where NEPA significance does not exist, then an EA would be prepared.
- EA's may be prepared when a previous NEPA analysis which adequately covers the potential for impacts in the same area or is considered tierable under the NEPA regulations has been completed. In certain cases, the previous document can be adopted in whole, and the present decision can be based on the prior analysis.

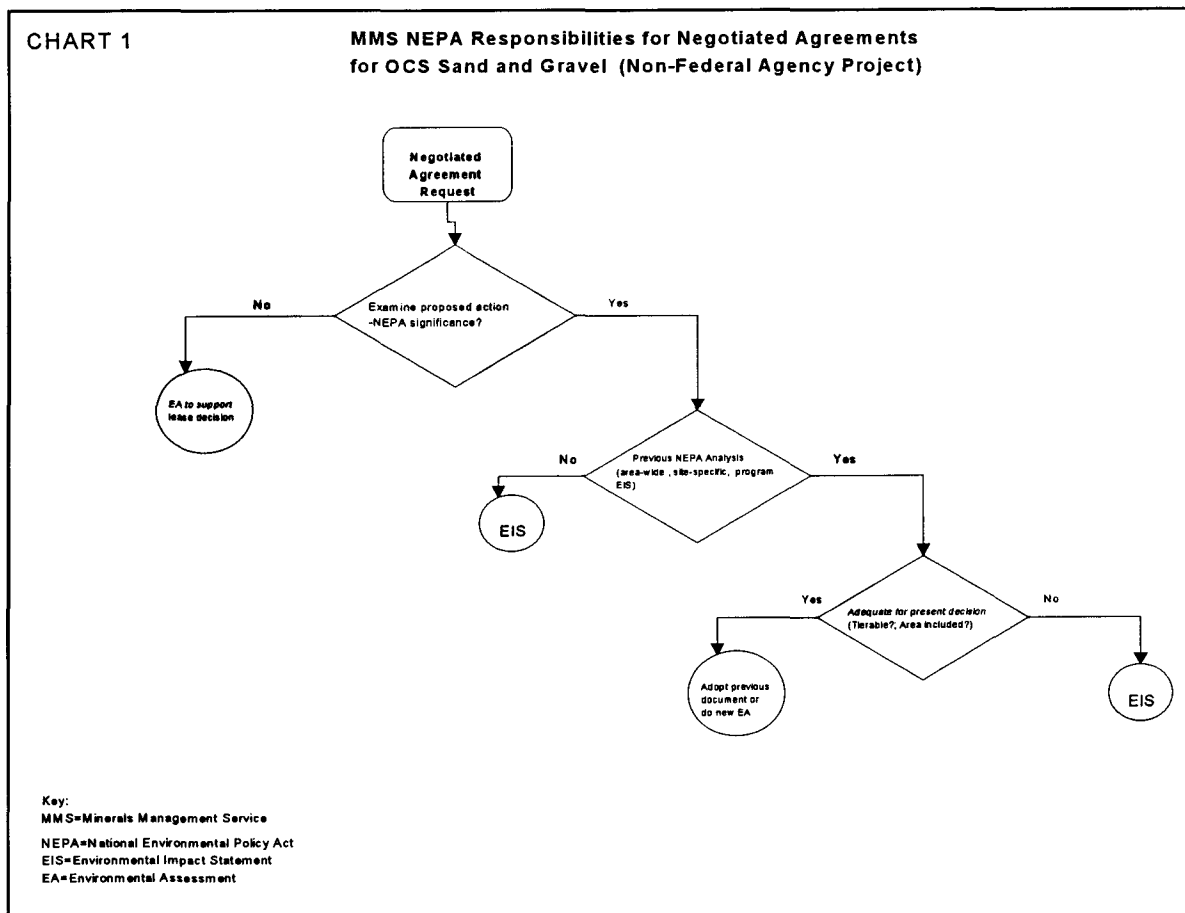
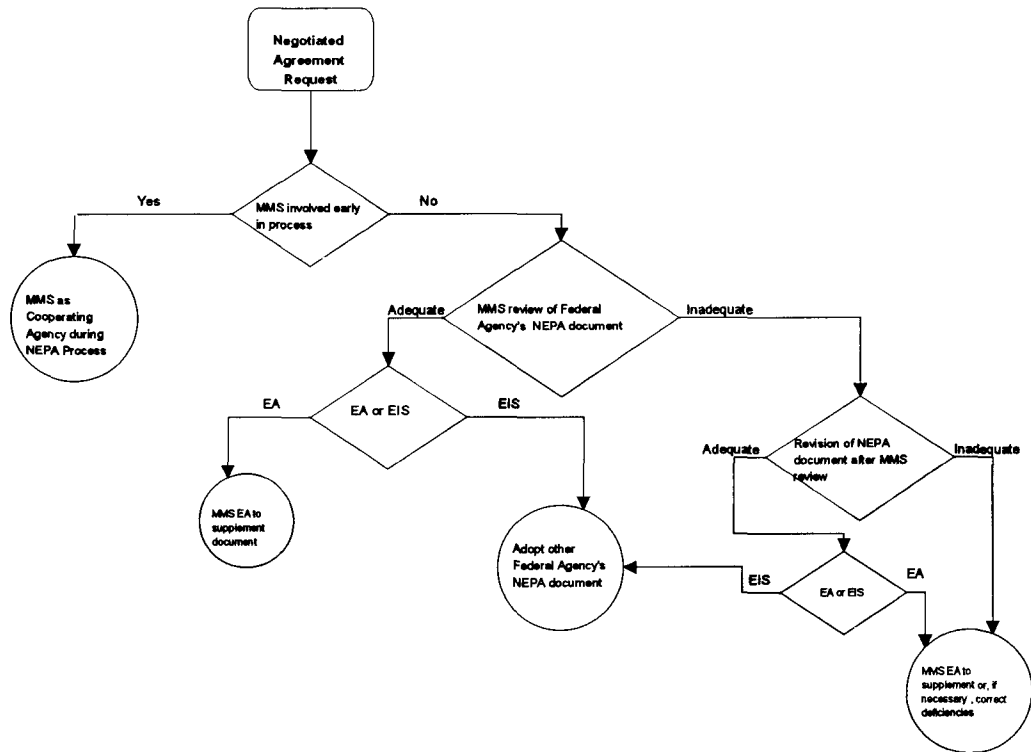


Chart 2 is a flow diagram outlining MMS actions for other **FEDERAL AGENCY OCS SAND AND GRAVEL RESOURCES NEGOTIATED AGREEMENTS**. Key considerations are presented in bullet form below.

- When a proposed project for which the negotiated agreement is intended is a Federal agency project that requires the use of Federal sand, then that agency normally will undertake the required NEPA analysis.
- In instances when the MMS is notified by the other Federal agency prior to initiation of the NEPA process, then the MMS would request cooperating agency status and prepare sections of the EIS that pertain exclusively to the use and transportation of OCS sand. The MMS would also participate in the Endangered Species Consultation.
- When an outside agency has prepared the NEPA analysis, whether it be an EIS or EA, the MMS must undertake a detailed review of the document to determine its adequacy for supporting a negotiated agreement.
- If the outside agency's document is an EIS found to be adequate, then the NEPA regulations allow the MMS to adopt the document. The MMS will place a notice in the Federal Register outlining the MMS position. As an example, the MMS is currently reviewing an EIS completed by the COE's Baltimore District, which will be used to support a negotiated agreement to use Federal sand to renourish a portion of Assateague Island in Maryland. We intend to adopt the Assateague Island document since an MMS review has indicated that the information can be used to support our decision on a negotiated noncompetitive lease.
- NEPA regulations concerning adoption do not extend to EA's. Therefore, even if an MMS review indicates that the other Federal agency's EA is adequate, the MMS must prepare its own EA to support the potential agreement.
- When an MMS review of a Federal agency's EIS or EA indicates that the analysis is not sufficient, then the MMS will (if the document is a preliminary or draft) send a detailed review letter outlining the inadequacies and detailing the revisions that should be made.
- If the document is an EIS and is revised accordingly, then the MMS would adopt the document as outlined above. If the revised EA is adequate, the MMS will prepare a short and concise EA to support the agreement.
- If the revised document, whether it be an EIS or an EA, is not sufficient, then the MMS would prepare a detailed EA correcting the defined deficiencies. As an example, in response to the Navy's request to use sand from Sandbridge Shoal to renourish the beach at the Fleet Combat Training Center in Dam Neck, Virginia, the MMS completed an EA to supplement and enhance the Navy's NEPA document before issuing the lease.

CHART 2

**MMS NEPA Responsibilities for Negotiated Agreements
for OCS Sand and Gravel (Federal Agency Projects)**



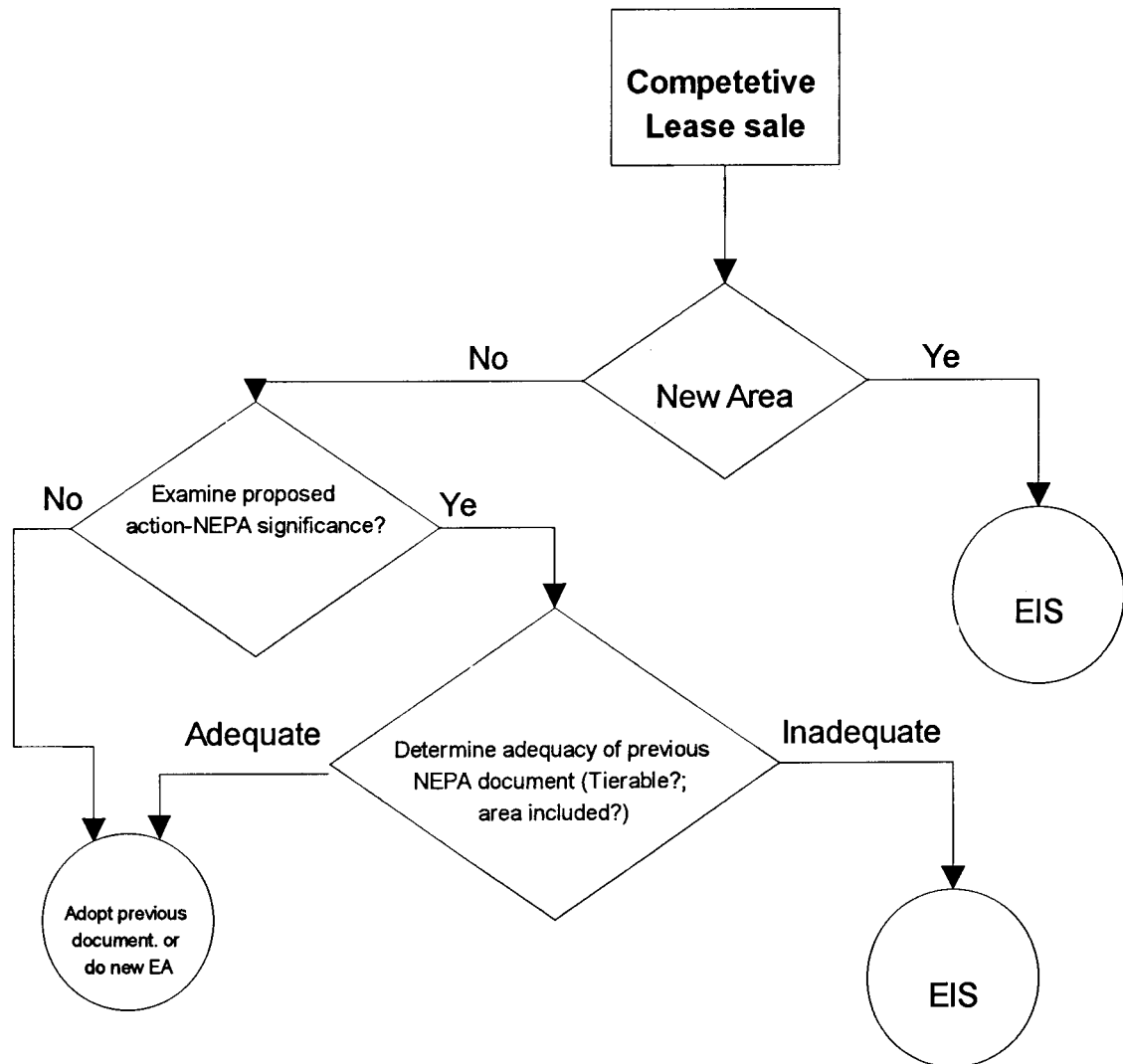
Key:
MMS=Minerals Management Service
NEPA=National Environmental Policy Act
EIS=Environmental Impact Statement
EA=Environmental Assessment

Chart 3 is a flow diagram outlining MMS actions for **FEDERAL OCS SAND AND GRAVEL RESOURCES COMPETITIVE LEASE SALES**. Key considerations are presented in bullet form below.

- If the proposed sale is to be held in a new area for which a previous EIS has not been completed, then an EIS will be prepared.
- Should an EIS or other NEPA document exist, the MMS must determine its adequacy in light of the new decisions to be made, if it covers the area being considered for lease, or if it is tierable.
- If an EIS exists, but new environmental information is available, such that it would significantly affect the decision, then a new EIS would be prepared.
- If an existing EIS or NEPA material serves to support any new decisions, then the previous document would be adopted or a new EA be prepared to supplement or support the previous analysis.

CHART 3

MMS NEPA Responsibilities for Competitive Hard Mineral Lease Sales



Key:

MMS=Minerals Management Service

NEPA=National Environmental Policy Act

EA=Environmental Assessment

EIS=Environmental Impact Statement